

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT L. LAWRENCE and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 99-1367; Submitted on the Record;
Issued June 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's compensation claim on the grounds that he did not establish that his claim was filed within the applicable time limitation provisions of the Federal Employees' Compensation Act.

On April 23, 1998 appellant filed a traumatic injury claim alleging that on September 2, 1993, while washing trailers, he sustained a right knee injury after he jumped in a puddle of water.¹ Appellant indicated that he received care from Dr. Richard Beaty, an osteopath, for a tear of the anterior horn of the lateral meniscus right knee as a result of the injury.

By letter dated May 7, 1998, the Office requested appellant to submit additional information. The Office noted that claims for compensation must be filed within three years from the date of injury unless the employing establishment has, within 30 days of the date of injury, actual knowledge that an employee suffered an injury in the performance of duty. The Office inquired about the details of appellant's injury and whether his employing establishment had actual knowledge within 30 days of the alleged incident on September 2, 1993. Appellant was allotted 30 days to submit additional evidence; however, he did not respond within the allotted time.

By decision dated June 11, 1998, the Office denied compensation on the grounds that appellant had not timely filed his claim as required by the Act. The Office found that the

¹ The Board notes that appellant filed a previous claim for compensation benefits in 1988, alleging that, while working for the employing establishment on April 12, 1988, he injured his left knee while running up stairs. Appellant also filed a claim for compensation on February 10, 1994 for an injury to his left leg. The Office accepted the April 12, 1988 claim for strain of the left knee, tear of the posterior horn of the medial meniscus of the left knee and chondromalacia of the left knee for which he received a schedule award. Appellant subsequently underwent surgery for a torn lateral meniscus of the right knee and alleged that his right knee condition for which he had undergone surgery was causally related to the April 12, 1988 accepted injury. By decision dated May 15, 1997, the Office denied appellant compensation. The May 15, 1997 decision of the Office was affirmed on April 9, 1998.

evidence submitted was insufficient to establish that written notice was given to the employing establishment within 30 days of the date of injury, and therefore, appellant failed to meet his burden of proof that his claim was timely filed within the requisite three-year limit.

Appellant requested an oral hearing before an Office hearing representative in an undated letter, postmarked on June 17, 1998.

A hearing was held on December 14, 1998, at which appellant was advised that the issue was whether he made a timely filing on April 23, 1998 for his traumatic injury alleged on September 2, 1993. Appellant testified about his left knee injury sustained in 1988, and that he initially believed that the ensuing problems of his right knee resulted from applying all of his weight to it, to accommodate the left knee injury. He stated that he had forgotten about the injury sustained to his right knee after jumping in a puddle of water in 1993, until a doctor's report read at a 1997 oral hearing recalled the incident, and that he subsequently filed a traumatic injury claim on April 23, 1998. Appellant testified that, shortly after the 1993 injury, he reported the incident to his immediate supervisor; however, no paperwork was ever initiated.

By decision dated February 10, 1999, the Office hearing representative affirmed the June 11, 1998 Office decision, finding that appellant had failed to timely file his claim.

The Board finds that the Office properly denied appellant's compensation claim on the grounds that he did not establish that his claim was filed within the applicable time limitation provisions of the Act.

Section 8122(a)² of the Act provides that an original claim for compensation for disability or death must be filed within 3 years after the injury or death, unless the immediate superior had actual knowledge of the injury or death within 30 days, which knowledge must be such to put the immediate superior reasonably on notice of an on-the-job injury or death, as provided by 5 U.S.C. § 8122(a)(1), or written notice of injury or death was given within 30 days.

In the instant case, appellant stated that he did not recall the alleged September 2, 1993 work-related injury to his right knee until 1997, and as such, he did not file his claim until April 23, 1998. Since appellant did not file a claim until April 23, 1998, he is clearly outside the three-year limitation period and his claim is, therefore, untimely.

Appellant's claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate supervisor had actual knowledge of his alleged employment-related injury within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of appellant's injury.³ An employee must show not only that his immediate superior knew that he was injured, but also knew or reasonably should have known that it was an on-the-job injury.⁴ There is no evidence in the record, however, which indicates that appellant's immediate

² 5 U.S.C. § 8122(a).

³ 5 U.S.C. § 8122 (a)(1); *see also Jose Salaz*, 41 ECAB 743 (1990); *Kathryn A. Bernal*, 38 ECAB 470 (1987).

⁴ *Charles B. Fenton*, 36 ECAB 151 (1984); *Richard E. Jacobson*, 33 ECAB 1571 (1982).

supervisor had actual knowledge of his injury within 30 days of the date of the injury. Appellant indicated that he gave verbal notice of the incident, but that no written documentation was initiated. There is no documentation of record from an employing establishment supervisor establishing notice of the injury within 30 days of the alleged incident on September 2, 1993. Thus, appellant did not submit sufficient evidence to establish that there was actual notice of a work-related injury.⁵ Consequently, the exception to the statute is not met and appellant's claim for compensation is untimely filed.

The decisions of the Office of Workers' Compensation Programs dated June 11, 1998 and February 10, 1999 are affirmed.

Dated, Washington, D.C.
June 15, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁵ See *John Giovanni Carollo*, 41 ECAB 778, 794 (1990).